IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

CRL.A.No. 250 of 2003()

CC.196/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IDUKKI

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APPELLANT: COMPLAINANT:

A.M. JOY, ARACKAL HOUSE,
IDUKKI COLONY P.O., VAZHATHOPE.

BY ADV. SRI.S.RADHAKRISHNAN

RESPONDENT: ACCUSED:

JAMES, S/O. AVIRA, KURICHIYIL HOUSE,
MULAKUVALLY P.O., IDUKKI VILLAGE.

BY ADV. SRI.P.K.JOSE
SRI.JOICE GEORGE
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.250 of 2003

Dated this the 11th day of October, 2007

JUDGMENT

The appellant who is the complainant in C.C.No.196/2000 in the file of Judicial First Class Magistrate Court, Idukki had initiated proceedings under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The prosecution case is that the accused had borrowed a sum of Rs.40,000/- from the complainant and when the amount was demanded on 28.12.1999 the accused issued cheque dated 5.1.2000 which when presented got dishonoured on 5.4.2000 for want of funds in the account of the accused. The lawyer notice he issued was replied to mentioning frivolous contentions.

3. The evidence adduced in the matter consisted of the testimony of PW1, Exts. P1 to P4(b) and Ext. C1 and defence examined DWs' 1 and 2 of whom DW2 is the accused himself and got marked Exts. D1 and D2.

4. It was brought out in evidence that the impugned

cheque is from the cheque book issued to the accused in the year 1997 and that by 1998 he had exhausted all the cheque leafs of the particular series issued to him except another cheque leaf and the impugned cheque leaf. It was also brought out that the accused was issued another two cheque books and the cheque leaves of the same were also presented. Hence, the circumstance that the cheque leaf from the cheque book issued in 1997 is allegedly issued on 28.12.1999 with the date of 5.1.2000 was treated as a circumstance in support of the version of the defence that he had not borrowed any amount from the complainant and that he had borrowed the amount from one Jose who is the nephew of the accused. The accused was also a Panchayath member. The accused was the then Vice President of the Panchayath. It is the version of the accused that the blank cheque leaf was given to the nephew of the complainant and that the amount was repaid. But the cheque leaf was not returned. The nephew of the complainant died subsequently. It was also brought out that the accused had filed a criminal complaint against the complainant with respect to the institution of the

present proceedings and the police filed a refer report which is Ext. D2. The police referred the matter observing that the dispute is of a civil nature. It is also seen that the cheque although dated 5.1.2000 was presented on 5.4.2000. It is explained that the accused requested that the cheque may not be presented on 5.1.2000 and on subsequent dates which is denied by DW2. It was in view of the above circumstance that the court below disbelieved the version of PW1 and acquitted the accused despite the fact that there were certain contradictions in the version of DW2 and that contained in Ext. P4 reply notice.

5. It is the contention of the appellant that once the signature in the impugned cheque is admitted automatically the statutory presumptions under Section 138 of the Negotiable Instrument Act would operate and then it is for the accused to rebut the presumptions by adducing evidence and that the same cannot be discharged by the testimony of the accused alone. I cannot agree with the above preposition. Admission of signature would not amount to admission of execution of cheque. The evidence has to be considered as a whole. In the instant case, I

find that the version of the accused appeared much more probable. Hence, I find no reason to deviate from the findings of the court below.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl